IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 29TH MARCH 2007 / 8TH CHAITHRA 1929

OP.No. 32713 of 2000(S)

PETITIONER:

BY ADV. SMT.N.SHOBHA

RESPONDENTS:

BY ADV. SRI.K.PRAVEEN KUMAR

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 29/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & T.R.RAMACHANDRAN NAIR, JJ.

O.P.NO. 32713 OF 2000

Dated this the 29th day of March, 2007.

JUDGMENT

Koshy, J.

This petition is filed challenging Ext.P4 order of the Central Administrative Tribunal. The Tribunal rejected the application on the ground of delay. Petitioner is a retired person. According to him in identical cases claims were allowed and petitioner is entitled to pension for the same reason. The grounds stated by the Tribunal for rejecting the claims is, on the ground that delay is 18 years. According to the petitioner, Apex Court remitted to the Tribunal for consideration of the application in *M.R.Gupta vs. Union of India and Others* (1995(5) SCC 628) when Tribunal rejected the application on the ground of similar delay, when a claim for arrear of salary was claimed for wrong computation after 11 years. Apex Court held in para 6 as follows:-

> " 6: The Tribunal misdirected itself when it treated the appellant's claim as "one time action" meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct

> salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a government servant to be paid the correct salary throughout his tenure according to computation made in accordance with the rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See Thotta Chinna Subba Rao vs. Mattapalli Raju (AIR 1950 FC 1))"

In this case we are not going into the merits of the matter. When a retired employee approaches the Tribunal, the question to be considered whether he is entitled to the amount claimed. A Government or a Public Sector Undertaking cannot plead the question

of delay or technical reasons, to defeat the claim if employee is entitled to get the benefit from the employer especially when claim is recurring every month. If the petitioner's case is correct, it is a continuous wrong. However, we are of the view that burden is on the petitioner to prove the correctness of claim as employer cannot be directed to produce documents at this distance of time. Therefore the Tribunal is directed to reconsider the matter but the burden of proving is left to the petitioner. With the above direction this Writ Petition is disposed of by setting aside Ext.P4 order and directing the Tribunal to reconsider the matter according to law.

J.B.KOSHY, JUDGE.

T.R.RAMACHANDRAN NAIR, JUDGE.

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